

AMENDED IN ASSEMBLY JUNE 21, 2000

AMENDED IN ASSEMBLY JUNE 14, 2000

AMENDED IN SENATE APRIL 15, 1999

**SENATE BILL**

**No. 1109**

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**Introduced by Senator Burton**

February 26, 1999

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An act to add Section 1198 to the Harbors and Navigation Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

SB 1109, as amended, Burton. Vessels.

Existing law provides that when a pilot for the ~~Bay~~ *Bays* of San Francisco, San Pablo, ~~or~~ *and* Suisun goes aboard a vessel, the pilot becomes a servant of the vessel and its owner and operator. Existing law also provides that nothing exempts the vessel or its owner or operator from liability to persons or property for damage or loss caused by the vessel or its operation on the ground that the vessel was piloted by a pilot or that the damage or loss was incurred as a result of the pilot's error, omission, fault, or neglect.

This bill would prohibit the rates and charges for pilotage services from including the cost of primary marine insurance, except as specified in the bill. The bill would require a pilot for the ~~Bay~~ *Bays* of San Francisco, San Pablo, ~~or~~ *and* Suisun to arrange to have available, upon written notice, trip insurance, with specified coverage limits, naming as insureds the pilot, any organization to which the pilot belongs, and their officers and employees, that insures the named insureds against any

civil claim relating to acts or omissions of the insureds in connection with providing pilotage services, except willful misconduct.

The bill would require a vessel *or its owner, operator, or charterer* hiring a pilot for the ~~Bay~~ Bays of San Francisco, San Pablo, ~~or~~ and Suisun to either pay for trip insurance, as specified, or to defend, indemnify, and hold harmless a pilot and any organization of pilots to which the pilot belongs, and their employees and officers, from specified liability resulting from an act, omission, or negligence of the pilot, other than willful misconduct, and to defend the pilot, as specified.

The bill would also apply these requirements to a vessel hiring a pilot for the Bay of Monterey if SB 2177 is enacted and becomes effective on or before January 1, ~~2000~~ 2001.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1198 is added to the Harbors and  
2 Navigation Code, to read:

3 1198. (a) Except as provided in subdivision (c), the  
4 rates and charges for pilotage services shall not include  
5 the cost of primary marine insurance insuring a pilot, an  
6 organization of pilots, or their officers or employees, from  
7 liability arising from negligence or errors in judgment in  
8 connection with the provision of pilotage service by  
9 pilots, organizations of pilots, or their officers or  
10 employees.

11 (b) A pilot who holds a state license for the ~~Bay~~ Bays  
12 of San Francisco, San Pablo, ~~or~~ and Suisun shall arrange  
13 to have available, upon advance written notice, trip  
14 insurance, with coverage limits of thirty-six million  
15 dollars (\$36,000,000), naming as insureds the pilot, any  
16 organization of pilots to which the pilot belongs, and their  
17 officers and employees, and insuring the named insureds  
18 against any civil claim, demand, suit, or action by  
19 whomsoever asserted, arising out of, or relating to,  
20 directly or indirectly, acts or omissions of the insureds in

1 connection with the provision of pilotage service, except  
2 willful misconduct.

3 (c) Every vessel, *owner, operator, or charterer* hiring  
4 a pilot with a state license for the ~~Bay~~ *Bays* of San  
5 Francisco, San Pablo, ~~or~~ *and* Suisun shall either defend,  
6 indemnify, and hold harmless pilots pursuant to  
7 paragraph (1), or alternatively, notify pilots of ~~its~~ *an*  
8 intent to pay for trip insurance pursuant to paragraph (2).  
9 If a vessel *or its owner, operator, or charterer* does not  
10 provide written notice pursuant to paragraph (2) of ~~its~~ *an*  
11 intent to exercise the trip insurance option, ~~the vessel~~  
12 *then the vessel and its owner, operator, and charterer* will  
13 be deemed to have elected the obligation to defend,  
14 indemnify, and hold harmless pilots pursuant to  
15 paragraph (1).

16 (1) (A) Except for a vessel electing trip insurance  
17 pursuant to paragraph (2), a vessel subject to this  
18 subdivision, and its owner, operator, charterer, and agent  
19 shall not assert any claim, demand, suit, or action against  
20 the pilot, any organization of pilots to which the pilot  
21 belongs, and their officers and employees, for damages,  
22 including any rights over, arising out of, or connected  
23 with, directly or indirectly, any damage, loss, or expense  
24 sustained by the vessel, its owners, agents, charterers,  
25 operators, or crew, or by any third parties, even if the  
26 damage results, in whole, or in part, from any act,  
27 omission, or negligence of the pilot, any organization of  
28 pilots to which the pilot belongs, and their officers and  
29 employees.

30 (B) A vessel subject to this ~~subdivision~~ *paragraph* and  
31 its owner, operator, and charterer shall, subject to any  
32 limitation of liability specified in any ~~contract~~, bill of  
33 lading, statute, or other provision of law, defend,  
34 indemnify, and hold harmless the pilot, any organization  
35 of pilots to which the pilot belongs, and their officers and  
36 employees, with respect to liability arising from any  
37 claim, suit, or action, by whomsoever asserted, resulting  
38 in whole, or in part, from any act, omission, or negligence  
39 of the pilot, any organization of pilots to which the pilot  
40 belongs, and their officers and employees.

(C) The prohibition on claims by vessels, owners, operators, charterers, and agents imposed by subparagraph (A) and the obligation to defend, indemnify, and hold harmless the pilot imposed by subparagraph (B) shall not apply in cases of willful misconduct by a pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

*(D) A pilot who is the prevailing party shall be awarded attorney's fees and costs incurred in any action to enforce any right provided pursuant to this subdivision.*

(2) In lieu of paragraph(1), a vessel subject to this subdivision and its owner, operator, charterer, and agent may elect to notify the pilot of intent to pay for trip insurance, as described in subdivision (b). If notice of this election is received, in writing, by the pilot at least 72 hours prior to the time pilotage services are requested, the vessel, and its owner, operator, charterer, and agent are not subject to the requirements of paragraph (1). The pilot shall take all steps necessary to have trip insurance coverage in place during the vessel movement for which it is requested. The pilot shall assess to the vessel the premium for the trip insurance at the pilot's cost, in addition to any other applicable rates and charges for the pilotage services provided.

SEC. 2. Section 1198 is added to the Harbors and Navigation Code, to read:

1198. (a) Except as provided in subdivision (c), the rates and charges for pilotage services shall not include the cost of primary marine insurance insuring a pilot, an organization of pilots, or their officers or employees, from liability arising from negligence or errors in judgment in connection with the provision of pilotage service by pilots, organizations of pilots, or their officers or employees.

(b) A pilot who holds a state license for the ~~Bay~~ Bays of San Francisco, San Pablo, ~~or~~ and Suisun or the Bay of Monterey shall arrange to have available, upon advance written notice, trip insurance, with coverage limits of thirty-six million dollars (\$36,000,000), naming as insureds the pilot, any organization of pilots to which the pilot

belongs, and their officers and employees, and insuring the named insureds against all civil claims, demands, suits, or actions by whomsoever asserted, arising out of, or relating to, directly or indirectly, acts or omissions of the insureds in connection with the provision of pilotage service, except willful misconduct.

(c) Every vessel, *owner, operator, or charterer* hiring a pilot with a state license for the ~~Bay~~ Bays of San Francisco, San Pablo, ~~or~~ and Suisun or the Bay of Monterey shall either defend, indemnify, and hold harmless pilots pursuant to paragraph (1), or alternatively, notify pilots of ~~its~~ *an* intent to pay for trip insurance pursuant to paragraph (2). If a vessel *or its owner, operator, or charterer* does not provide written notice pursuant to paragraph (2) of ~~its~~ *an* intent to exercise the trip insurance option, ~~the vessel~~ *then the vessel and its owner, operator, and charterer* will be deemed to have elected the obligation to defend, indemnify, and hold harmless pilots pursuant to paragraph (1).

(1) (A) Except for a vessel electing trip insurance pursuant to paragraph (2), a vessel subject to this subdivision, and its owner, operator, charterer, and agent shall not assert any claim, demand, suit, or action against the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, for damages, including any rights over, arising out of, or connected with, directly or indirectly, any damage, loss, or expense sustained by the vessel, its owners, agents, charterers, operators, or crew, or by any third parties, even if the damage results, in whole, or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

(B) A vessel subject to this ~~subdivision~~ *paragraph* and its owner, operator, and charterer shall, subject to any limitation of liability specified in any ~~contract~~, bill of lading, statute, or other provision of law, defend, indemnify, and hold harmless the pilot, any organization of pilots to which the pilot belongs, and their officers and

1 employees, with respect to liability arising from any  
2 claim, suit, or action, by whomsoever asserted, resulting  
3 in whole, or in part, from any act, omission, or negligence  
4 of the pilot, any organization of pilots to which the pilot  
5 belongs, and their officers and employees.

6 (C) The prohibition on claims by vessels, owners,  
7 operators, charterers, and agents imposed by  
8 subparagraph (A) and the obligation to defend,  
9 indemnify, and hold harmless the pilot imposed by  
10 subparagraph (B) shall not apply in cases of willful  
11 misconduct by a pilot, any organization of pilots to which  
12 the pilot belongs, and their officers and employees.

13 *(D) A pilot who is the prevailing party shall be*  
14 *awarded attorney's fees and costs incurred in any action*  
15 *to enforce any right provided pursuant to this subdivision.*

16 (2) In lieu of paragraph (1), a vessel subject to this  
17 subdivision and its owner, operator, charterer, and agent  
18 may elect to notify the pilot of intent to pay for trip  
19 insurance, as described in subdivision (b). If notice of this  
20 election is received, in writing, by the pilot at least 72  
21 hours prior to the time pilotage services are requested,  
22 the vessel, and its owner, operator, charterer, and agent  
23 are not subject to the requirements of paragraph (1). The  
24 pilot shall take all steps necessary to have trip insurance  
25 coverage in place during the vessel movement for which  
26 it is requested. The pilot shall assess to the vessel the  
27 premium for the trip insurance at the pilot's cost, in  
28 addition to any other applicable rates and charges for the  
29 pilotage services provided.

30 SEC. 3. Sections 1 and 2 of this bill both add Section  
31 1198 to the Harbors and Navigation Code. Section 2 of this  
32 bill shall only become operative if both this bill and Senate  
33 Bill 2177 are enacted and become effective on or before  
34 January 1, 2001, in which case Section 1 of this bill shall not  
35 become operative.

